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AUTHORITY: 33 U.S.C. 1321; 42 U.S.C. 9609; 49 CFR 1.46.

SOURCE: CGD 91-228, 59 FR 15022, Mar. 30, 1994, unless otherwise noted.

Subpart A—General**§ 20.101 Scope.**

(a) Except as specifically noted, these rules of practice and procedure apply to the following civil penalty proceedings before the United States Coast Guard:

(1) Class II civil penalties assessed under section 311(b) of the Federal Water Pollution Control Act, (33 U.S.C. 1321(b)(6)).

(2) Class II civil penalties assessed under section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)).

(b) In the absence of a specific provision in this part, the Federal Rules of Civil Procedure will be generally followed.

§ 20.102 Definitions.

Administrative Law Judge means any person designated by the Commandant under the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 33 U.S.C. 1321(b) and 42 U.S.C. 9609(b).

Chief Administrative Law Judge means the Administrative Law Judge appointed as the Chief Administrative Law Judge of the U.S. Coast Guard by the Commandant.

Civil penalty proceeding means a trial-type proceeding for the assessment of a civil penalty that offers an opportunity for an oral, fact-finding hearing before an Administrative Law Judge.

Coast Guard Representative means a Coast Guard official who has been designated to prosecute a class II civil penalty.

Commandant means the Commandant of the U.S. Coast Guard. The term Commandant includes the Vice-Commandant of the Coast Guard acting on behalf of the Commandant in any proceeding.

Complaint means a document issued by a Coast Guard Representative alleging a violation for which a penalty may be administratively assessed under 33 U.S.C. 1321(b) or 42 U.S.C. 9609(b).

Hearing Docket Clerk means an employee of the Office of the Chief Administrative Law Judge who is responsible for receiving documents, determining their completeness and legibility, and

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distributing them to the Administrative Law Judge and others, as required by this part.

Interested person means a person who, as provided in §20.404, files written comments on a proposed class II civil penalty assessment or files written notice of intent to present evidence in any hearing held on the proposed class II civil penalty assessment.

Mail includes U.S. first-class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

Motion means a request for an order or ruling from an Administrative Law Judge.

Party means a respondent or the Coast Guard.

Person includes an individual, partnership, corporation, association, public or private organization, or a government agency.

Personal delivery includes hand delivery or use of a contract or express courier service. "Personal delivery" does not include the use of government interoffice mail service.

Pleading means a complaint, an answer, any document and any amendment to a document permitted under this part.

Respondent means a person charged with a violation in a complaint issued under this part.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994, as amended by CGD 96-026, 61 FR 33662, June 28, 1996]

§ 20.103 Construction and waiver of rules.

(a) These rules will be construed to secure a just, speedy, and inexpensive determination in every class II civil penalty proceeding.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief Administrative Law Judge or a presiding Administrative Law Judge may, after notice, waive any of these rules to prevent undue hardship or manifest injustice, or if the expeditious conduct of a case so requires.

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Subpart B—Administrative Law Judges

§ 20.201 Assignment.

An Administrative Law Judge, assigned by the Chief Administrative Law Judge following receipt of the complaint, shall preside over each class II civil penalty proceeding.

§ 20.202 Powers.

The Administrative Law Judge shall have all powers necessary to the conduct of fair, expeditious, and impartial hearings, including the power to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;
- (d) Order discovery as provided in this part;
- (e) Hold hearing or settlement conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Issue decisions;
- (i) Exclude any person from a hearing or conference for disrespect, disorderly or rebellious conduct; and
- (j) Take any other action consistent with law and Coast Guard policy authorized by the Chief Administrative Law Judge.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§ 20.203 Unavailability.

(a) In the event that an Administrative Law Judge is unable to perform the duties described in §20.202 or otherwise becomes unavailable, the Chief Administrative Law Judge shall designate a successor.

(b) If a hearing has been commenced and an Administrative Law Judge is unable to proceed, a successor Administrative Law Judge may proceed with a hearing in a case. The successor Administrative Law Judge may, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor Administrative Law Judge may,